IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WP(C).No. 31081 of 2005(A)

AGAINST THE ORDER DATED 04/10/2005 IN IA.453/02 & 983/01 IN O.S.NO.90/2001 OF SUB COURT, OTTAPPALAM.

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PETITIONER/FIRST RESPONDENT:

C.S.VEERAMANI, S/O.SUBROMONIA IYER,
CHEMBAKATHURUTHY MADAM,
MANNISSERI, OTTAPPALAM,
PALAKKAD DISTRICT.

BY ADV. SRI.R.RAJESH KORMATH,
SMT.M.R.MINI,
SMT.SANJANA R.NAIR,
SRI.V.S.ROBIN.

RESPONDENTS/PETITIONER AND SECOND RESPONDENT:
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1. **NOOR SAHIB, S/O.PUTHANKALATHIL BAVA RAWTHAR,**
   MATHOOR AGRAHARAM P.O, CHEMGANIYOOR AMSOM DESOM,
   ALATHOOR TALUK, PALAKKAD DISTRICT.

2. **S.VIJAYAN, S/O.SASIDHARAN,**
   ANUGRAGEETHAM VEETTIL,
   MARATHA ROAD AMSOM DESOM,
   PALAKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.SAJAN VARGHEESE K. FOR R1,
SRI.LIJU. M.P,
SRI.M.V.BIPIN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.31081/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE BOND EXECUTED BY THE R.1. HEREIN BEFORE THE COURT BELOW ALONG WITH THE MEMORANDUM OF DEPOSIT OF TITLE DEED DTD. 09/08/2001 CREATING AN EQUITABLE MORTGAGE.

EXT.P.2: COPY OF THE BOND DTD. 18/09/2001 EXECUTED BY THE R.1.

EXT.P.3: COPY OF THE AFFIDAVIT DTD. 10/04/2002 ACCOMPANYING I.A. NO. 453/2002.

EXT.P.4: COPY OF THE COUNTER AFFIDAVIT DTD. 20/05/2002 FILED BY THE PETITIONER IN I.A. NO. 453/2002.

EXT.P.5: COPY OF THE ORDER DTD. 04/10/2005 IN I.A. NO. 453/2002.

EXT.P.6: COPY OF THE ORDER DTD. 04/10/2005 IN I.A. NO. 983/2001.

EXT.P.7: COPY OF THE COMMON ORDER DTD. 24/01/2002 IN I.A. NO. 983/2001 AND I.A. 73/2002.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.31081 of 2005

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Dated: 28th June, 2007

JUDGMENT

In this Writ Petition under Article 227 of the Constitution the plaintiff impugns Ext.P5 order by which the court below has directed return of a title document belonging to one Bava Rawthar who is not a party to the suit. Mr.Bava Rawthar produced the title document by way of security for the plaint claim so as to avert an order of attachment being passed against other properties belonging to the defendant in the suit. The security offered by Bava Rawthar was not accepted by the court obviously in the wake of objections raised by the plaintiff regarding the sufficiency of the security or some other reasons. The court below under the impugned order has directed return of the document to Bava Rawthar finding that there is no justification for retaining the document which is not accepted as security by the court below. The suit I am told is now decreed. The plaintiff-petitioner impugns Ext.P5 obviously on the reason that he has not been successful in locating properties of the defendant in the suit so that he can proceeded against them in execution. The petitioner has not complied with the orders passed by this court regarding service of notice to the 2nd respondent, the defendant in the

suit. The question to be considered is only whether Ext.P5 order passed by the learned Subordinate Judge can be said to be vitiated to such an extent as to warrant correction in the visitorial jurisdiction of this court under Article 227 of the Constitution. That question in my opinion can be answered only in the negative. The reasons stated by the learned Subordinate Judge in my view are reasonable. The challenge against Ext.P5 fails. The Writ Petition will stand dismissed. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**